



Welcome to the West Virginia Workers' Compensation Webinars!

Rule 1 - Claims Management and Administration

June 6, 2008



West Virginia
OFFICES OF THE
INSURANCE
COMMISSIONER

**Workers' Compensation Adjuster Training
Rule Title 85**

Workers' Compensation Rules Of

**The West Virginia Insurance Commissioner
Series 1**

**Claims Management And Administration
"RULE 1"**

The Nuts and Bolts of Workers' Compensation Claims Adjusting

Purpose: Rule 1 establishes the requirements and procedures to be followed by those entities involved in the administration of workers' compensation claims.

AMENDMENTS

- Extensive amendments to Rule 1 are currently under consideration. Notations are made in this presentation to the amended portions of Rule 1. The amendments are not final and, as such, are subject to change.
- **85-1-1. General provisions.** Perhaps the biggest amendment to Rule 1. It is now applicable to self insured employers.

How does the claim adjusting process begin?

Reporting the Injury
(Injured Worker and Employer)

85-1-3 Injured Worker's Report of Injury

- “Immediately” after sustaining an occupational injury or becoming aware of an occupational disease, the Injured Worker shall:
 - ❖ Seek necessary medical care;
 - ❖ “Immediately” or ASAP give written notice of occurrence of injury to Employer; and
 - ❖ File a WC claim.
- “Immediately” means: notice shall be provided to the Employer within 2 working days of the DOI.
- Failure to give immediate notice of the injury shall weigh against a finding of compensability and will dilute the credibility and reliability of the claim.

AMENDMENT

- 85-1-3: Under no circumstances shall the fact that the written notice was provided later than 2 working days subsequent to the DOI be the sole basis for the denial of a claim.

CAVEAT

- W.Va. Code §23-4-15 (except for OP or other types of OD) an application for compensation **must be filed within 6 months of the DOI or death**. Failure to file a claim within the time stated shall forever bar the filing of a claim.

85-1-4 Employers' Report of Injury

- The Employer shall report to the OIC the occurrence of an injury within 5 days of receipt of Injured Worker's desire to file a claim.
- Failure to comply may result in a fine in the amount of up to \$250.00 per occurrence assessed by the OIC.

AMENDMENT

- 85-1-4: Employer shall report to “responsible party” occurrence of an injury within 5 days of receipt of Injured Worker’s desire to file a claim.
- Responsible party means the OIC, private insurer or self-insured employer, whichever is applicable.
- \$250.00 fine provision was eliminated.



**So, the claim has been filed.
Now what?**

**Rules Specific to Adjusting the Claim
(TTD/PPD and Non-Awarded Partial Benefits)**

85-1-5 Special Rules for TTD

➤ 85-1-5.1: TTD Eligibility-To qualify for TTD the IW must:

- ❖ Miss 3 or more days due to the compensable injury.
- ❖ To receive TTD benefits for those 3 days, the IW must miss 7 or more days due to the compensable injury.

85-1-5 Special Rules for TTD

➤ 85-1-5.2: TTD and Retirement.

- ❖ If the IW retires he/she is disqualified from receiving TTD as a result of the compensable injury unless the application for TTD was received prior to his/her retirement. This section does not preclude payment of benefits due an Injured Worker if the retiree returns to work and suffers a compensable injury. Further, this section shall not preclude eligibility for TTD benefits if the compensable injury causes the Injured Worker to retire.

AMENDMENT

TTD and Retirement.

- If the Injured Worker retires and remains in retirement, then he/she is disqualified from receiving TTD benefits.

85-1-5 Special Rules for TTD

85-1-5.3: TTD and Periodic Employment.

- If the period of disability includes a reasonably ascertainable period of time during which the Injured Worker would NOT have been compensated by his/her employer, then TTD benefits shall NOT be paid during that period.
- A “reasonably ascertainable period” shall not apply to reductions in force, lay-offs, or time-off provided as an employee benefit.

AMENDMENT

85-1-5.3: TTD and Periodic Employment.

- If the period of disability includes a reasonably ascertainable period of time during which the Injured Worker would not have been performing work for any employer, then TTD benefits shall NOT be paid during that period.

85-1-6 Special Rules for PPD

85-1-6.1: Notice

- If an award is made or an award is refused then the OIC or private carrier shall send to each interested party a written notice setting forth the decision and advising the parties of the right to protest the decision by filing an objection with the OIJ in writing within 30 days (now 60 days by statute) of receipt of notice.

85-1-6.2: Computation of award.

- The award shall be computed in accordance with the law in effect when the award is payable.

85-1-6.3: Payment of PPD

- The award shall be paid in monthly installments equal to the impairment award. For example; a 10% PPD award will be paid over a 10 month period starting with the month following the award.

AMENDMENT

85-1-6: Special Rules for PPD

- Entire section has been eliminated under the proposed amendments to Rule 1.
- Permanent partial disability awards may be paid either by lump sum or in installments. Payment of permanent partial awards shall commence within thirty (30) days of the decision granting the award. (85-1-10.5).

85-1-8 Special Rules for Non-Awarded Partial Benefits

85-1-8.1:

- Non-Awarded partial benefits are payable only if the weight of evidence indicates that a permanent disability exists.

85-1-8.2:

- Non-awarded benefits are not payable in a claim that has been reopened for TTD and in which a PPD award was previously made.

85-1-8.3:

- Non-awarded benefits paid prior to the entry of the PPD award shall be deducted when the PPD award is granted.

85-1-8 Special Rules for Non-Awarded Partial Benefits

85-1-8.3:

- If the non-awarded payments exceed the PPD award, then the IW will not receive further benefits from the award and any excess is considered an overpayment which shall be collected from any future disability award in the same **or any other claim**. (includes TTD, PPD, PTD and Non-awarded).

85-1-8.4:

- The OIC or private carrier shall cease paying non-awarded benefits if the amount already paid will likely exceed the anticipated PPD award.

85-1-8.5:

- If the IW begins to receive rehabilitation benefits, then non-awarded benefits shall cease until the rehabilitation process is completed.

85-1-8 Special Rules for Non-Awarded Partial Benefits

85-1-8.6:

- Non-awarded benefits shall cease if the IW fails (without good cause) to present for an examination or rating.
- If suspended for good cause, then the benefits can be reinstated once the IW presents for the examination or rating; however, no back-pay.

85-1-8.7:

- Non-awarded benefits are paid at the same rate as the PPD rate.

AMENDMENT

85-1-8: Special Rules for Non-Awarded Benefits.

- Section renumbered as Section 9 (85-1-9).



When Must Certain Carrier Actions Be Performed?

85-1-9 Time Standards

85-1-9.1: Injury and OD claims.

- For all claims (other than OP), the claim shall be ruled upon within 15 working days of date of receipt of all required information.
- If the claim has not been adequately documented, then the party may require the production of additional evidence.
- The 15 day period is tolled during the evidence gathering process.

85-1-9.2: OP claims.

- Non-medical rulings shall be entered within 15 working days of date of receipt of all required information.
- If the claim has not been adequately documented, then the party may require the production of additional evidence.
- The 15 day period is tolled during the evidence gathering process.

85-1-9 Time Standards

85-1-9.3: Medical claims.

- Requests for authorization shall be acted upon within 15 working days of date of receipt.

85-1-9.4: Appliances, Devices and Supplies.

- Requests for authorization for purchase of prosthetic or other appliances, devices or medical supplies shall be acted upon within 15 working days of date of receipt.

85-1-9 Time Standards

85-1-9.5: Medical Evaluations.

- a. Referrals for examinations and/or evaluations for the purpose of a disability rating shall be made within 20 working days of the end of a 120 day period of TTD.
- b. Examinations and/or evaluations by the OP Board shall be scheduled and notice of the same shall be transmitted to the parties within 60 days of the date of non-medical rulings directing referral to the Board.

85-1-9 Time Standards

85-1-9.6: Permanent disability ratings.

- a. Permanent disability evaluation reports shall be acted upon within 30 days of receipt.
- b. Findings of the OP Board shall be transmitted to the parties within 30 working days of the date of examination by the Board.

85-1-9 Time Standards

85-1-9.7: Petitions to Reopen.

- a. Petitions to reopen for TTD or medical benefits shall be acted upon within 10 working days of receipt. If the claim has not been adequately documented, then the party may require the production of additional evidence. The 10 day period is tolled during the evidence gathering process.
- b. Petitions to reopen for permanent disability shall be ruled upon within 30 days of receipt.

85-1-9 Time Standards

85-1-9.8: Applications for modification of awards.

➤ Applications for modification of awards filed by the Employer shall be ruled upon within 20 working days of the date of receipt.

AMENDMENT

85-1-9: Time standards.

Entire Section renumbered as Section 10 (85-1-10).

- 85-1-10.1: Claim must be filed on properly executed and prescribed forms (OIC promulgated forms) and submitted to the responsible party which shall rule on the claim within 15 days from the date of receipt of all required information.
- If the claim is not adequately or properly developed for consideration, the responsible party may require the production of additional evidence.
- The 15 day rule is tolled during the evidence gathering process.



What About Child Support and Spousal Support?

85-1-10 Child Support and Spousal Support orders.

- 85-1-10.1: W.Va. Code §23-4-18 allows child and/or spousal support payments to be withheld from the injured worker's compensation and sent to the Bureau for Child Support Enforcement.
- Compensation means: TTD benefits, temporary partial rehabilitation benefits, non-awarded partial benefits, PPD benefits and PTD benefits.

85-1-10 Child support and spousal support orders.

- 85-1-10.2: The amount to be withheld will be the amount stated in the withholding notice issued pursuant to the West Virginia Domestic Relations Act.
- 85-1-10.3: When the award of compensation is for PPD or non-awarded benefits, 100% of the benefit can be withheld.

85-1-10 Child support and spousal support orders.

- 85-1-10.4: When the award of compensation is for TTD, temporary partial, rehabilitation temporary total, PTD or dependent benefits, the amount to be withheld will be the amount stated in the withholding notice subject to the limitations set out (see below) in Table 1a.

Family	Arrears	Percentage
Not supporting another family	Less than 12 weeks old	Max of 50%
Not supporting another family	Greater than 12 weeks old	Max of 55%
Supporting another family, even just a spouse	Less than 12 weeks old	Max of 40%
Supporting another family, even just a spouse	Greater than 12 weeks old	Max of 45%

AMENDMENT

85-1-10: Child Support and Spousal Support Orders.

- Entire Section renumbered as Section 11 (85-1-11).
- 85-1-11.3: Insurance Commissioner or private carrier replaced by responsible party.
- 85-1-11.4: Insurance Commissioner or private carrier replaced by responsible party.



What About the Overpayments?

85-1-11 Overpayments.

- 85-1-11.1: Overpayments include the receipt of any monies to which it is subsequently determined the injured worker was not entitled to receive or have been paid. Overpayments include, but shall not be limited to: TTD benefits, PPD benefits, PTD benefits, non-awarded partial disability benefits, TT rehabilitation benefits, TP rehabilitation, dependents' benefits, fatal benefits (104 wks), travel reimbursement, and medical benefits.
- 85-1-11.2: Overpayments may be collected by withholding future disability benefits payable to the injured worker or the injured worker's dependents in the same or other claims.

85-1-11 Overpayments.

- 85-1-11.3: Collection of overpayments from TTD, PTD, temporary total rehabilitation, temporary partial rehabilitation, dependents' benefits, and fatal benefits shall be limited to 30% of the periodic benefit amount (weekly, bi-weekly, monthly, etc.).
- Except, if the overpayment was based upon fraud, abuse or mistake, caused in whole or in part by the injured worker or his/her agent, then a 100% withholding is permissible.
- 85-1-11.4: Collection of overpayments from travel reimbursement, PPD and non-awarded partial shall not be limited and may be withheld in full.

AMENDMENT

85-1-11: Overpayments

- Entire Section renumbered as Section 12 (85-1-12).
- 85-1-12.1: Overpayments include any monies receive from, or paid on an injured workers' behalf by the responsible part.
- 85-1-12: Responsible part can withhold future disability benefits in the same claim or other claims which are pending with the same responsible party to whom the overpayment is due.



What About OP and OD Claims?

85-1-12 Occupational Pneumoconiosis and Occupational Disease Claims

- 85-1-12.1: OD claims that involve disability or death resulting from occupational pneumoconiosis (OP) must be processed in accordance with the statutory provisions prescribing the administration of OP claims.
- Claims involving cancer caused by the inhalation of minute particles of dust over a period of time in the course of and resulting from employment are OP claims.
- Statutes of limitation for OP cancer claims will begin to run on the date when the occupational cancer was made known to the injured worker by a physician or on the date when the injured worker should reasonably have known, whichever shall last occur.

85-1-12 Occupational Pneumoconiosis and Occupational Disease Claims

- 85-1-12.2: Carpal tunnel and all other nerve entrapment syndromes of the upper extremity shall be filed as occupational disease claims unless the syndrome is a secondary diagnosis to an otherwise compensable claim.
- 85-1-12.3: An occupational disease claim filed on the opinion of a psychologist shall be denied. Psychologists are not treating physicians, and are not permitted to certify occupational disease disability.

AMENDMENT

85-1-12: Occupational Pneumoconiosis and Occupational Disease Claims.

Entire Section renumbered as Section 13 (85-1-13).

- 85-1-13.1: In any claim involving an occupational disease, other than OP, resulting from inhalation of minute particles of dust over a period of time in the course of and resulting from employment: (1) which is filed as an occupational disease claim (rather than an OP claim); and (2) in which a permanent disability determination is required, the claim shall be referred to the OP Board for a determination of whole body medical impairment.

AMENDMENT

85-1-12: Occupational Pneumoconiosis and Occupational Disease Claims.

- Provided, that this subsection shall not affect the applicability of benefits or any other procedures available under the West Virginia Code for occupational disease claims other than OP claims.
- The OP Board's findings and conclusions regarding whole body medical impairment shall have the same legal force and effect as any other findings and conclusions of the Board.
- Provided, that the jurisdiction of the OP Board is limited solely to the determination of whole body medical impairment.



Closing the Claim?

85-1-13. Special Rules on Closure of Claims

- 85-1-13.1: Medical benefits in all no lost time claims and TTD claims shall cease and the claim administratively closed 6 months after the last date of service.
- A protestable order shall be issued upon closure.
- This provision does not prohibit an injured worker's right to reopen at a later date.

AMENDMENT

85-1-13: Special Rules on Closure of Claims

- Entire section has been removed. “Administrative” closure is not permitted.
- See also, *Lovas v. Consolidation Coal Co.*, Supreme Court No. 33670 (2008), in which the West Virginia Supreme Court held that West Virginia 85 CSR § 1-31.1 (2007) is void, because it does not reflect the intention of the West Virginia legislature as expressed in W. Va. Code § 23-4-16(a)(4), especially as the rule has been administered since promulgation.

AMENDMENT

85-1-13: Special Rules on Closure of Claims

- The West Virginia Supreme Court noted that a claim could be internally deactivated (for medical benefits) only if: (a) deactivation was not a closure; (b) claimant should not be notified of the internal deactivation; (3) it is not necessary for a claimant to file a petition to reopen to internally reactivate the claim; and (4) standard evidence demonstrating that a requested authorization is medically necessary and reasonably required to treat the injury will suffice to internally reactivate the claim.



Suspending Benefits Due to Injured Worker Abuse

85-1-14. Procedures for suspension for claimant abuse.

85-1-14.1: TTD benefits suspended when evidence justifies a finding of abuse. Specific examples of abuse include:

- Engaging in physical activities inconsistent with the compensable injury.
- Failure to undergo examinations or needed treatment.
- Working at an unreported job while drawing TTD.
- Making false or misleading statements for the purpose of securing any benefit.
- Altering, falsifying, destroying or concealing workers' compensation related records.

85-1-14. Procedures for suspension for claimant abuse.

85-1-14.3: Procedure for suspension.

- Issue a notice of benefit suspension which provides the injured worker with 30 days to submit evidence justifying reinstatement.
- If no justification is received, then issue a protestable notice that the claim has been closed for TTD payments.
- If justification is received, TTD benefits will be reinstated with back benefits awarded.

85-1-14. Procedures for suspension for claimant abuse.

- 85-1-14.4: In claims pending prior to approval of a managed health care plan, failure to select a treating physician from an approved managed health care plan within 60 days of notification will result in a suspension of medical and indemnity benefits until the selection is made, unless the injurer worker is eligible to opt out of the managed care plan network.

AMENDMENT

85-1-14: Procedure for Suspension for Claimant Abuse.

- 85-1-14.1: Insurance Commissioner or private carrier replaced by responsible party.
- 85-1-14.2: Insurance Commissioner or private carrier replaced by responsible party.

What About Travel Expenses?

- 85-1-15: Injured worker is entitled to “reasonable” travel, meals and lodging expenses actually incurred in connection with authorized medical examinations or treatment.
- Reasonable is drawn from the travel regulations for State employees unless specifically exempted. Mileage reimbursement is \$0.15 per mile.
- This mileage rate does not apply to reimbursement requests when the private carrier requires the injured worker to undergo the examination and has selected the physician, or when an employer is required to reimburse reasonable travel and other expenses as provided for in W.Va. Code § 23-4-8. In those instances, the rate shall be those set forth in the travel regulations for State employees.

What About Travel Expenses?

85-1-15.2: Physical limitations.

- Where a medical vendor certifies that an injured worker, because of health reasons, requires special travel arrangements in order to report for an authorized examination, the injured worker shall be reimbursed for the cost of the special travel arrangements.

85-1-15.3: Injured worker's residence.

- Examinations shall be performed as near as practicable to the injured worker's residence. If the injured worker relocates out of State, then:
- If the relocation is due to health or financial hardship, then a change of residence will be endorsed and meal and lodging expenses shall be as follows:

85-1-15.3: Injured Worker's Residence. - Continued

- If the distance from the injured worker's residence and the situs of the examination is less than 400 miles, then expenses shall be paid in accordance with 15.1 and 15.2 of this section.
- If the distance from the injured worker's residence and the situs of the examination is more than 400 miles, expenses actually incurred en route shall be payable to a maximum amount of the round trip air fare (economy class), from the closest airport offering scheduled commercial passenger service.

85-1-15.3: Injured Worker's Residence. - Continued

- If the injured worker objects to any order and the employer does not, and the injured worker is subsequently directed to report for an examination upon a request by the employer, then the injured worker will be entitled to reimbursement of expenses from point of entry into West Virginia.
- If the relocation is not due to health or financial hardship, then expenses shall only be payable from point of entry into West Virginia.

AMENDMENT

85-1-15: Travel Expenses-Medical Examination and Treatment.

- 85-1-15.1: Insurance Commissioner or private carrier replaced by responsible party.
- 85-1-15.3: Insurance Commissioner and /or private carrier replaced by responsible party.



What About Expert Witnesses?

85-1-16 Expert witness appearances.

- 85-1-16.1: An authorized treating physician or a consulting physician appearing at a hearing to give testimony regarding an examination of an Injured Worker will be paid by the Carrier a fee not to exceed \$100 per quarter hour.
- 85-1-16.2: All other expert witness shall be paid a usual and customary rate for the profession involved, not to exceed \$100 per quarter hour by the party wishing to examine or cross-examine the expert witness.
- If the expert witness demands an amount in excess of \$100 per quarter hour, then it will be the sole responsibility of the party who retained the expert to pay for the difference.

AMENDMENT

- Entire Section renumbered as Section 17 (85-1-17).

AMENDMENT

- Added a new provision concerning complaints against Workers' Compensation Carriers and Self-Insured Employers made with the Consumer Services Division of the OIC.



Consumer Complaints

85-1-16 Complaints.

- Upon receipt of any inquiry from the OIC regarding a complaint the private insurer or self insured employer shall, within 15 days of the date appearing on the inquiry, furnish the OIC with a complete written response.
- The response must address all issues raised by the complainant or the OIC and include copies of requested documents.
- This subsection shall not permit delay in responding to inquiries by the OIC in conjunction with a scheduled examination.

Litigation of Claims AMENDMENT

85-1-7 Notice and Litigation.

- 85-1-7.1: In all WC claim protests, the parties shall be limited to:
 - ❖ the Injured Worker or his/her dependants;
 - ❖ the employer; and
 - ❖ in claims involving funds created by W.Va. Code §23-2C-1 (The Old Fund) the OIC.

Litigation of Claims AMENDMENT

- 85-1-7.2: Upon the making of any decision, the responsible party shall send the parties a written notice of the decision setting forth the basis of the decision, and inform the Injured Worker or his/her dependents of the right to protest the decision by filing a protest with the OOI within **60 days** of the date of the decision.

Litigation of Claims

AMENDMENT

- 85-1-7.3: In claims where there was insurance coverage on the DOI or date of last exposure, the private carrier has sole authority to act on behalf of the employer in the claim (includes making claims decisions, appointing counsel for the defense and directing litigation strategy).
- An insured Employer, via the Carrier, may not protest a decision. The exceptions to this rule are decisions:
 - ❖ incorporating findings made by the OP board; and
 - ❖ entered pursuant to W.Va. Code §23-4-7a(c)(1) (authorized treating physician recommends PPD award of 15% or less and OIC enters an award based upon the recommendation).
- Caveat: The Employers protest shall be subject to the insurer's sole authority to act on the Employers behalf in the litigation of the claim.

Implementation and Stay of Orders from the OoJ

- 85-1-17.1: Compliance with any order of the OoJ is required within 30 calendar days of the entry of the order.
- 85-1-17.2: Motions for stay may be filed for any order of the OoJ which requires the payment of indemnity or which holds a claim (or condition) compensable. The motion for stay may be filed with the ALJ who entered the order **or the BOR**.
- 85-1-17.3: A motion for stay filed with the ALJ must be filed within 10 calendar days of the date of entry of the order.
- A motion filed with the BOR must be filed contemporaneously with the Notice of Appeal.
- The Injured Worker may file a response to the motion within 10 calendar days of the date the motion was filed.
- The OoJ or the BOR shall enter an order granting or denying the motion within 10 calendar days from the end of the response period.

Implementation and Stay of Orders from the OoJ

85-1-17.4: A motion for stay must contain:

- ❖ a. statement of the reasons why the stay is being sought; and
- ❖ b. a statement of the grounds for the underlying appeal.

- Failure to include the above shall be grounds for the motion to be summarily denied.
- 85-1-17.5: If the stay is granted, the order shall be limited to a stay of TTD or PPD benefits. No order granting the motion shall allow the stay of medical, rehabilitation or PTD benefits.
- 85-1-17.6: If the stay is granted by the OoJ, the order shall be limited to the date of the jurisdictional time limit for the filing of an appeal of the underlying order, or to the entry of a decision by the BOR of the underlying appeal if an appeal is filed.

Implementation and Stay of Orders from the OoJ

- If the stay is granted by the BOR, the order shall be limited to the date of the entry of a decision by the BOR of the underlying appeal. Except, if the BOR remands the case back to the OoJ, then the stay shall remain in effect until the OoJ enters a new order on the issue that was remanded.

AMENDMENT

- Entire Section renumbered as Section 18 (85-1-18).

Miscellaneous

- 85-1-18.1: Incidents that do not result in material medical treatment, or that are not reasonably expected to result in medical treatment need not be reported to the TPA.
- 85-1-18.2: If mail sent by the OIC or an Insurer to an Injured Worker, Employer or vendor or any other party in the claim is returned due to an incorrect address, a reasonable effort shall be made to determine the correct address.
- If after reasonable effort and due diligence a correct address cannot be located, then the OIC or the insurer shall cease mailing correspondence until a correct address is provided.

AMENDMENT

- Entire Section renumbered as Section 19 (85-1-19).
- 85-1-18.1 was removed. Therefore, incidents which do not result in material medical treatment or that are not reasonably expected to result in medical treatment are to be reported to the responsible party.

Preferred Drug List

- 85-1-19: The OIC and any Insurer may establish a preferred drug list for the purposes of:
 - ❖ improving the quality of care by utilizing a PDL of generics and brand medications in the absence of generics;
 - ❖ affecting cost savings by determining what is reasonably required; and
 - ❖ optimizing pharmaceutical care and cost effectiveness.

AMENDMENT

- Entire Section renumbered as Section 20 (85-1-20).

Severability

- 85-1-20: One bad apple (rule provision) doesn't spoil the bunch (all of Rule 1).

AMENDMENT

- This section was removed.



CONTACT INFORMATION

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